

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FONTA M. JONES,

Defendant.

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8:08CR411

MEMORANDUM AND ORDER

This matter is before the court on the government's Motion for Reconsideration (Filing No. [28](#)), of this court's February 19, 2009 Memorandum and Order (Filing No. [26](#)) granting the defendant's motion to suppress (Filing No. [12](#)). The government contends the court should reconsider its ruling in light of a factual error in the February 19, 2009 Memorandum and Order.

The court has reviewed the record (including the transcript, found at Filing No. [22](#)) and the Memorandum and Order (Filing No. [26](#)), and finds that the factual error in the February 19, 2009 Memorandum and Order has no bearing on the outcome of this court's ruling. In the Memorandum and Order, this court concluded that "[t]he observation that an individual is walking down a street in a high-crime area while holding his arm inside his hoodie pocket does not give rise to a reasonable inference that the safety of the officers or others is in danger." Filing No. [26](#). The government now asserts that "[t]he only evidence at the Suppression hearing herein is that the defendant was continuously holding his hand against the hoodie pocket. There was no evidence that his hand was ever inside the hoodie pocket." Filing No. [28](#) at 1. Upon review of the record, the court finds that the government's citation of factual error is correct; the evidence in the record substantiates

the assertion that the defendant's hand was continuously held *against* the hoodie pocket, not *inside* the hoodie pocket. See, e.g., Filing No. [22](#) at 10 ("He was walking while clutching the front area of his hoodie pocket with his right hand."); Filing No. [22](#) at 11 ("[H]e was holding his hand directly over the hoodie pocket.").

The court does not find, however, that this factual correction has any bearing on the outcome of this court's February 19, 2009 Memorandum and Order. While this court concluded that observing an individual with his arm inside his hoodie pocket does not give rise to a reasonable inference that the safety of the officers or others is in danger, this court now finds that the observation that an individual holding his hand *against* his hoodie pocket, in plain view of the observing police officer, similarly does not give rise of a reasonable inference that the safety of the officers or others is in danger. Accordingly,

IT IS ORDERED that the government's Motion for Reconsideration (Filing No. [28](#)) is denied.

DATED this 4<sup>th</sup> day of March, 2009.

BY THE COURT:

s/ Joseph F. Bataillon  
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Chief District Judge